

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

CHARLES PRITCHETT,

Plaintiff,

07 CV 3169 (HB)

-against-

THE CITY OF NEW YORK,
CAPTAIN WILLIAM McSORLEY,
POLICE OFFICER ROBERT CANDREA,
POLICE OFFICER WILSON,
POLICE OFFICER ERIK CHRISTIANSEN,
POLICE OFFICER MINDY ANGUEIRA,
POLICE OFFICER JAMES ROGERS, and
"JOHN/JANE DOES #1-5"

**DECLARATION OF COUNSEL
IN SUPPORT OF PLAINTIFF'S
REQUEST FOR AN ENTRY
OF DEFAULT**

Defendants.

----- X

MICHAEL B. LUMER, an attorney admitted to practice before this Court,
pursuant to 28 U.S.C. § 1746, hereby declares and affirms under penalty of perjury as follows:

1. I am associated with the law firm of Reibman & Weiner, attorneys for the plaintiff, Charles Pritchett, in the above-captioned action, and submit this affirmation in support plaintiff's request that the Clerk of Court enter a notation of default against defendant Police Officer James Rogers as to the claims asserted by plaintiff in his Complaint, and issue a Certificate of Default accordingly. I am familiar with all the facts and circumstances in this action.

2. On April 20, 2007, I commenced the instant action by filing the Complaint with the Clerk of Court for the Southern District of New York, as reflected in the docket entry of April 23, 2007.

3. The action alleges, in part, that several of the officers, including Police Officer James Rogers, falsely arrested the plaintiff, and used excessive force against him, or permitted such violations of his constitutional rights to occur, in July 2006. The complaint specifically identified defendant Rogers by both full name, shield number and command.

4. On May 16, 2007, Domingo Barros, a process served employed by this firm, served defendants Rogers, Angueira, Candrea, McSorley, and Christensen, at the 45th precinct station house, located at 2877 Barkley Avenue, Bronx, New York, by handing copies of the Summons and Complaint to a person identified as Lieutenant Halloran.

5. On May 21, 2007, I filed by ECF the affidavits of service establishing the service of the summons and complaint on each of the individual defendants in this action. The affidavit of service concerning defendant Mr. Rogers was filed as Document 8.

6. Each of the individual defendants, other than Rogers, subsequently appeared and filed an answer in this action through the Office of the Corporation Counsel of the City of New York.

7. Upon information and belief, and as set forth in the affidavit of service sworn to by Domingo Barros on May 16, 2007, Mr. Rogers (who is a member of the New York City Police Department) is neither an infant, an incompetent person, or a member of the military.

8. At no time has Rogers answered or otherwise appeared in this action, and the time to do so has expired.

9. The Clerk of Court should therefore enter the default of defendant Police Officer James Rogers with respect to the claims and causes of action asserted against him by plaintiff Charles Pritchett, pursuant to all applicable provisions of the Fed.R.Civ.P., including

FRCP 55(a).

WHEREFORE, plaintiff Charles Pritchett respectfully requests entry of the default by defendant Police Officer James Rogers with respect to the claims and causes of action contained in the Complaint as asserted by plaintiff against said defendant.

Dated: Brooklyn, New York
April 9, 2008

Michael B. Lumer (ML-1947)